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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Petition to Revoke Probation
12 Against:

Case No. 2001-62

13 **LEONA MARY MATHA, aka**
LEONA MARY POE, aka
14 **LEONA MARY AUGLEY, aka**
LEONA MARY KELLER, aka
15 **LEONA MARY KNIGHTS, aka**
LEONA MARY WAGING, aka
16 **LEONA MARY WEGING, aka**
EDITH MARIE DOWNS

17 P. O. Box 6112
Stateline, NV 89449

18 Registered Nurse License No. 522065,

19 Respondent.
20

PETITION TO REVOKE
PROBATION

21 Petitioner alleges:

22 **PARTIES**

23 1. Ruth Ann Terry, M.P.H., R.N. ("Petitioner") brings this Petition
24 to Revoke Probation solely in her official capacity as the Executive Officer of the Board of
25 Registered Nursing, Department of Consumer Affairs.

26 2. On or about May 17, 1996, the Board of Registered Nursing ("Board")
27 issued Registered Nurse License Number 522065 to Leona Mary Matha, also known as Leona
28 Mary Poe, also known as Leona Mary Augley, also known as Leona Mary Keller, also known

1 as Leona Mary Knights, also known as Leona Mary Waging, also known as Leona Mary Weging,
2 also known as Edith Marie Downs ("Respondent"). The license will expire on July 31, 2009,
3 unless renewed.

4 Disciplinary History

5 3. On or about September 15, 2000, an Accusation was filed against
6 Respondent in the disciplinary action entitled, "*In the Matter of the Accusation Against: Leona*
7 *Mary Matha, aka Leona Mary Poe, aka Leona Mary Augley, aka Leona Mary Keller, aka*
8 *Leona Mary Knights, aka Leona Mary Waging, aka Leona Mary Weging, aka Edith Marie*
9 *Downs,*" Case No. 2001-62, alleging violations of the Nursing Practice Act (Bus. & Prof.
10 Code, § 2700 et seq.). On or about April 26, 2001, following an administrative hearing, a
11 Proposed Decision was issued in Case No. 2001-62. Effective November 23, 2001, in the
12 Decision After Nonadoption, the Board issued an Order revoking Registered Nurse License
13 Number 522065; however, the revocation was stayed and Respondent was placed on probation
14 for a period of five (5) years under the following pertinent terms and conditions:¹

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16 **(2) COMPLY WITH PROBATION PROGRAM** - Respondent
17 shall fully comply with the terms and conditions of the Probation
18 Program established by the Board and cooperate with repre-
19 sentatives of the Board in its monitoring and investigation
20 of the respondent's compliance with the Probation Program.
Respondent shall inform the Board in writing within no more
than 15 days of any address change and shall at all times maintain
an active, current license status with the Board, including during
any period of suspension.

21

22 **(7) FUNCTION AS A REGISTERED NURSE** - Respondent,
23 during the period of probation, shall engage in the practice of
24 registered nursing in California for a minimum of 24 hours per
25 week for 6 consecutive months or as determined by the Board.
For purposes of compliance with the section "engage in the
practice of registered nursing" may include, when approved
by the Board, volunteer work as a registered nurse, or work

27 1. On or about October 24, 2006, pursuant to Condition #7, the period of probation was
28 extended by the Board to November 22, 2007.

1 in any non-direct patient care position that requires licensure
2 as a registered nurse.

3 The Board may require that advanced practice nurses engage in
4 advanced practice nursing for a minimum of 24 hours per week
5 for 6 consecutive months or as determined by the Board.

6 If respondent has not complied with this condition during the
7 probationary term, and the respondent has presented sufficient
8 documentation of his or her good faith efforts to comply with
9 this condition, and if no other conditions have been violated, the
10 Board, in its discretion, may grant an extension of the respondent's
11 probation period up to one year without further hearing in order to
12 comply with this condition.

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14 **(13) VIOLATION OF PROBATION** - If a respondent
15 violates the conditions of her probation, the Board after giving
16 the respondent notice and an opportunity to be heard, may set aside
17 the stay order and impose the stayed discipline or revocation of
18 the respondent's license.

19 If during the period of probation, an accusation or petition to
20 revoke probation has been filed against respondent's license or
21 the Attorney General's Office has been requested to prepare an
22 accusation or petition to revoke probation against respondent's
23 license, the probationary period shall automatically be extended
24 and shall not expire until the accusation or petition has been acted
25 upon by the Board. Upon successful completion of probation,
26 the respondent's license will be fully restored.

27 ...

28 **(16) ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD
ALTERING) DRUGS** - Respondent shall completely abstain
from the possession, injection or consumption by any route of all
psychotropic (mood altering) drugs, including alcohol, except
when the same are ordered by a health care professional legally
authorized to do so and are part of documented medical
treatment....

4. A copy of the Accusation, the Decision After Nonadoption, and related
documents in Case No. 2001-62 are attached hereto as "Exhibit A" and are incorporated herein
by reference.

JURISDICTION

5. Business and Professions Code section 2750 provides:

Every certificate holder or licensee, including licensees
holding temporary licenses, or licensees holding licenses placed
in an inactive status, may be disciplined as provided in this
article [Article 3 of the Nursing Practice Act (Bus. & Prof.
Code, § 2700 et seq.)]. As used in this article, "license"

1 includes certificate, registration, or any other authorization to
2 engage in practice regulated by this chapter. The proceedings
3 under this article shall be conducted in accordance with Chapter 5
4 (commencing with Section 11500) of Part 1 of Division 3 of
Title 2 of the Government Code [the Administrative Procedure
Act], and the board shall have all the powers granted therein.

5 **GROUND FOR REVOCATION OF PROBATION**

6 6. Pursuant to Condition #13 of the probation that was granted by the Board
7 in the Decision After Nonadoption, Case No 2001-62, grounds exist to set aside the stay
8 of revocation and impose the revocation of Registered Nurse License No. 522065, in that
9 Respondent has failed to comply with the terms and conditions of probation, as follows:

10 a. **Condition #2: Comply with Probation Program.** Respondent
11 failed to comply with the Board's Probation Program, as set forth in paragraphs 6(b) and 6(c),
12 below.

13 b. **Condition #7: Function as a Registered Nurse.** Respondent failed
14 to engage in the practice of registered nursing in California for a minimum of 24 hours per week
15 for 6 consecutive months.

16 c. **Condition #16: Abstain From Use Of Psychotropic (Mood-Altering**
17 **Drugs.** Respondent failed to abstain from psychotropic drugs in that the results of drug
18 screening tests for Respondent were positive for alcohol on December 28, 2004, January 4, 2005,
19 May 15, 2006, July 5, 2007, and August 21, 2007.

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1 PRAYER

2 **WHEREFORE**, Petitioner requests that a hearing be held on the matters herein
3 alleged, and that following the hearing the Board issue a decision:

4 1. Revoking the probation that was granted by the Board in Case
5 No. 2001-62, and imposing the disciplinary order that was stayed, thereby revoking Registered
6 Nurse License No. 522065, issued to Leona Mary Matha, also known as Leona Mary Poe, also
7 known as Leona Mary Augley, also known as Leona Mary Keller, also known as Leona Mary
8 Knights, also known as Leona Mary Waging, also known as Leona Mary Waging, also
9 known as Edith Marie Downs; and,

10 2. Taking such other and further action as deemed necessary and proper.

11
12 **DATED:** 11/14/07

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16 RUTH ANN TERRY, M.P.H., R.N.
17 Executive Officer
18 Board of Registered Nursing
19 Department of Consumer Affairs
20 State of California
21 Petitioner
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BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

LEONA MARY MATHA aka
LEONA MARY POE, aka
LEONA MARY AUGLEY, aka
LEONA MARY KELLER, aka
LEONA MARY KNIGHTS, aka
LEONA MARY WAGING, aka
LEONA MARY WEGING, aka
EDITH MARIE DOWNS

P.O. Box 6112
Stateline, NV 89449

Registered Nurse License No. 522065,

Respondent.

Case No. 2001-62

OAH No. N2000090595

DECISION AFTER NONADOPTION

Administrative Law Judge M. Amanda Behe, Office of Administrative Hearings, State of California, heard this matter in South Lake Tahoe, California on March 27, 2001.

Janice K. Lachman, Deputy Attorney General, represented complainant.

Richard K. Specchio, Attorney at Law, represented respondent.

Documentary and testimonial evidence was received, and the matter was submitted on March 27, 2001.

The Administrative Law Judge issued her Proposed Decision on April 26, 2001. The Board of Registered Nursing ("Board") declined to adopt the Proposed Decision and issued its Notice of Nonadoption of Proposed Decision on July 3, 2001. On August 2, 2001, the Board issued its Order Fixing Date for Submission of Written Argument. The time for filing written argument in this matter having expired, the entire record, including argument submitted by respondent, having been read and considered by the Board, pursuant to Government Code section 11517, the Board hereby makes the following decision and order:

FACTUAL FINDINGS

1. Ruth Ann Terry, R.N., M.P.H., is the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs (hereinafter "the Board"), and made and filed the Accusation in her official capacity.
2. On May 17, 1996, the Board issued registered nurse license number 522065 to Leona Mary Matha aka Leona Mary Poe aka Leona Mary Augley aka Leona Mary Keller aka Leona Mary Knights aka Leona Mary Waging aka Leona Mary Weging aka Edith Marie Downs (hereinafter "respondent"). The license was in full force and effect at all times relevant to the charges in the Accusation.
3. Respondent testified that Leona Mary Matha is one of her married names. Leona Mary Poe is one of her married names. Leona Mary Augley is a name related to a man named "Augley" with whom she lived. Leona Mary Keller is one of her married names. Leona Mary Knights is a name related to a man named "Knights" with whom she lived. Leona Mary Waging is an incorrect spelling of her maiden name, Leona Mary Weging. Edith Marie Downs is a name related to a false identification she obtained when under 21 years of age using a friend's identification. Respondent obtained the false identification so she could work in restaurant with a liquor license.
4. Pursuant to Business and Professions Code section 2750 the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 of the Nursing Practice Act.
5. Business and Professions Code section 2761 provides that:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

“(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

“(2) A conviction of practicing medicine without a license in violation of Chapter 5 (commencing with Section 2000), in which event the record of conviction shall be conclusive evidence thereof.

“(3) The use of advertising relating to nursing which violates Section 17500.

“(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.”

6. Business and Professions Code section 2762(a) provides that it is unprofessional conduct to “[o]btain or possess in violation of law, or prescribe, or except as directed by a licensed physician or surgeon, dentist, or podiatrist administer to himself or herself ... any controlled substance as defined in Division 10 ... of the Health and Safety Code or any dangerous drug ... as defined in Section 3022.”

7. Business and Professions Code section 2762(b) provides that it is unprofessional conduct to “[u]se any controlled substance as defined in Division 10 ... of the Health and Safety Code or any dangerous drug ... as defined in Section 3022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.”

8. Pursuant to Business and Professions Code section 2764 the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the license or to render a decision imposing discipline on the license.

9. Pursuant to Business and Professions Code section 125.3 the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the Nursing Practice Act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

10. In July 10, 1998, respondent commenced employment at Barton Memorial Hospital in South Lake Tahoe, California.

11. Respondent testified that in August 1998, she was in an abusive relationship and engaged in binge drinking, but it did not affect her work as a nurse. Terry Vance, whom she described as "remotely an ex-boyfriend" from her twenties, was staying with her for a couple days in August 1998. When he got out of prison in 1996, she picked him up and drove him to San Diego. Respondent claimed they were not in contact regularly after that until 1998 when he wrote her a letter and she responded. She recalled that he had just received a \$50,000 settlement and was looking into real estate.

12. Although respondent knew of Mr. Vance's convictions and prison terms, she claimed that she did not realize the extent of his involvement in drugs. That testimony was not credible.

13. Teresa Duffy has been a deputy with the Douglas County Sheriff's Office in Nevada for twelve years. In August 1998, Deputy Duffy was assigned to day shift patrol. On August 28, 1998, she and Deputy Tom Mezzetta were dispatched to investigate a possible drug overdose in the Round Hill area. They were directed to respond to a general location on a street behind Safeway, to a male caller who did not know his exact street address. They observed a man, later identified as Terry Vance, who contacted them. They followed him to an apartment in which they found respondent unconscious on the floor of the upstairs bathroom.

14. Mr. Vance was attempting CPR on respondent when the deputies entered the bathroom. They moved him, and Deputy Mezzetta placed respondent in a better position. When he moved her head respondent took gasping breath, and Deputy Mezzetta detected a pulse. Once respondent became coherent she stated that after arising she went downstairs, and that was the last thing she remembered. Mr. Vance claimed he did not know anything about respondent's state.

15. The deputies told respondent and Mr. Vance that the paramedics needed to know exactly what she had taken to save her life. Mr. Vance told Deputy Duffy that respondent injected heroin and he found her on the toilet with a needle in her arm. He claimed that he flushed the heroin and disposed of the needle. The deputies observed feces and a tampon in the toilet and concluded that he hid the heroin. The deputies found the needle in a trash can concealed in tissue. Deputy Duffy observed that Mr. Vance was sweating and had constricted pupils; she opined that he was also under the influence of heroin. She noted a number of inconsistencies in his statements, including how he disposed of the heroin.

16. Respondent told the deputies that she had not used heroin for at least five years and denied that she was an addict. She said the preceding night she and Mr. Vance went out to Hoss Hogg's in South Lake Tahoe and obtained heroin that she injected that morning. Paramedics then arrived at the apartment and administered Narcan. Deputy Duffy recalled that respondent "popped right out of her state." Respondent was hesitant to talk to the

deputies. She refused to be transported to Barton, the nearest hospital, because she was a nurse there. She was taken to Carson City Hospital, which was a lengthier drive away. Mr. Vance was arrested for failure to register as an ex-felon, destruction of evidence, and obstruction of justice. He had a record of convictions and incarceration for narcotics and other charges.

17. The night before the August 28, 1998 incident, respondent and Mr. Vance went drinking and she awoke with a hangover. Respondent testified that she made chocolate milk for both of them, and Mr. Vance added "opium" to his drink which she accidentally drank. She denied telling the deputies that she injected heroin; her testimony was not credible. She testified that she lied to Deputy Duffy by saying she obtained the heroin at Hoss Hogg's in order to protect Mr. Vance.

18. Respondent recalled telling a nurse in the Emergency Room that she drank chocolate milk containing drugs. She claimed that the hospital reports of Dr. Botenburg and a social worker regarding her drug use were made while she was "groggy." She remembers speaking with Dr. Botenburger but not the specifics of their conversation.

19. Respondent presently claims that the drugs belonged to Mr. Vance, and that her ingestion was accidental. She testified that the inconsistencies between her statements to the deputies, hospital staff, and hearing testimony exist because of her "fear and protecting someone she should not have tried to protect." She asserted that she felt "misplaced protection" for Mr. Vance, who would return to prison for a long time if she acknowledged to the police that the drugs were his.

20. Jeffrey M. Trippon, a retired Board investigator, investigated the complaint by Barton Memorial Hospital that respondent overdosed on heroin. That information was received at Barton Memorial Hospital on August 28, 1998, and respondent was terminated the following day.

21. Investigator Trippon obtained Carson City Hospital records which reflected respondent's use of amphetamines and opiates [morphine], including the August 31, 1998, discharge summary report. The hospital records indicated to Investigator Trippon that at time of her hospital admission, respondent was under the influence of narcotics.

22. Investigator Trippon wrote to respondent on December 16, 1998, requesting that she contact him and respond to the allegations. On December 28, 1998, she called him and represented that she would send a written statement. She failed to do so. On August 6, 1999, he unsuccessfully attempted to locate her at her address of record. On August 9, 1999, he again wrote to respondent notifying her that her written statement had not been received and that an interview had been scheduled for September 1, 1999. Respondent called Investigator Trippon on August 18, 1999, and said that she could not appear due to her job but would send a statement and other documents.

23. On August 28, 1999, Investigator Trippon received respondent's written statement in which she claimed that she did not know drugs were in her glass of milk and that she was not dependant on drugs. She included a letter from the Nevada State Board of Nursing that they did not have statutory jurisdiction regarding the complaint from Barton Memorial Hospital in California. Respondent did not appear for the September 1, 1999 interview. On February 8, 2000, Board Investigator Annette Rodriguez contacted respondent for a personal interview. Respondent did not return the call.

24. Respondent presented evidence [Exhibit D] that she was arrested on October 17, 1998, on a charge of being under the influence of a controlled substance in violation of Nevada Revised Statutes section 453.411(a), a felony. She pled guilty to possession, and on July 12, 2000 the plea was withdrawn and the case dismissed. The records of the related proceedings in the Justice Court of Tahoe Township, Douglas County, Nevada, were sealed by court order on October 11, 2000. Respondent told Investigator Trippon that she was in a diversion program regarding the criminal charges and was participating in drug counseling. The Nevada Board of Nursing elected to not take any disciplinary action.

25. Allen Funderburg, R.N.,¹ M.S.N., is the Director of Nursing at Sierra Convalescent Center, a nursing home facility in Nevada. Mr. Funderburg has supervised respondent for slightly more than one year in her job as Nurse Assessment Coordinator. He described that her attendance is very good and she displays no problems with punctuality. She has excellent communication skills, cooperation, and respect for the rights of others. Her accuracy, safety consciousness, documentation, job knowledge, and quality of work are also outstanding. Mr. Funderburg opined that respondent has been an educator for licensed vocational nurses and nurse assistants on staff, as well as other nurses at times. Respondent is presently working part-time at Sierra Convalescent Center and also at a dialysis center. Mr. Funderburg would have her back working full-time if respondent were available.

26. With regard to the August 1998 incident, Mr. Funderburg testified that he "has a very hazy understanding that was an accidental overdose" and "I have given it very little thought." About two months before the hearing, he learned of the matter from respondent who said that she unknowingly was given the substance at a party. Mr. Funderburg has no concern that the incident affected respondent's ability to perform her nursing duties, and has seen nothing to suggest that respondent is using drugs. His job involves checking nurses' mood swings, performance, etc. He is aware that respondent participates in counseling for her acknowledged problem with alcohol, and she takes time off for meetings on a regular basis. Mr. Funderburg has no concern that patient safety has been compromised.

27. Nikolet Madeline Shelton, R.N., is the nurse manager of Dialysis Centers, Inc., in Carson City, Nevada. In October 2000, Ms. Shelton hired respondent and since observed

¹ Mr. Funderburg is a nurse licensed in Nevada and Texas.

her "on the floor." She works directly with her much of the time. Ms. Shelton described that respondent is conscientious and always on time, and her job performance is fastidious including "thorough" charting. Her manner with patients is professional and she asks for assistance when necessary.

28. About a month before the hearing, respondent advised Ms. Shelton of the overdose of heroin that put her California license in jeopardy, and that she ended up in an emergency room. Ms. Shelton did not ask for details because, having observed respondent in the work setting, she had no concern that respondent used illegal substances. Respondent had previously disclosed that she is an alcoholic, and Ms. Shelton is aware she attends Alcoholics Anonymous.

29. Susan Brandon has been licensed in Nevada as an alcohol and drug abuse counselor since 1993 and as a clinical social worker since 1999. Ms. Brandon testified that as an alcohol and drug abuse counselor she does not do testing, but that "I just look at people and know if they have been using drugs or alcohol." She and respondent met in October 1999 when Ms. Brandon was hired at Sierra Convalescent Center. Ms. Brandon has been respondent's sponsor since November 1999, and she described that respondent has worked diligently and done a fourth and fifth step with her. Based upon their working closely together at Sierra Convalescent Center, Ms. Brandon opined that respondent is a perfectionist and doing the jobs of three people.

30. Ms. Brandon understands that respondent is in trouble for an accidental overdose of heroin, and they have discussed the incident on more than one occasion. Ms. Brandon opined that it was a one-time accidental ingestion in which respondent drank "her ex's chocolate milk and it had drugs in it." Ms. Brandon opined that honesty about the circumstances of addiction is one of the essentials of recovery. However, when asked if she would be concerned about a person's inconsistencies in describing an incident she stated "it would depend."

31. Lyle Dornon is a substance abuse counselor at Sierra Recovery Center, and holds a Nevada license. Mr. Dornon met respondent as part of an outpatient focus group about two years before the subject hearing. The focus group is for clients stabilized in recovery, and is in addition to attendance at Alcoholics Anonymous or Narcotics Anonymous. Mr. Dornon opined that he "can tell if people are lying to us" about drug or alcohol use. He performed an assessment of respondent at the suggestion of her attorney for the subject hearing. He opined that the severity level of her addiction to alcohol is low because she is stable in recovery, and dealing very well with the consequences of her past. She is in a pretty stable relationship. Respondent reported her past drug use as only marijuana. In consequence, Mr. Dornon has no information that she used heroin in the past.

32. Mr. Dornon testified that it would surprise him to learn that respondent told a police officer that she had used heroin. He acknowledged that the possibility always exists

that an individual might have a slip but that the probability is good that respondent will not relapse.

33. Respondent testified that she is a sound, competent nurse and has never been compromised on the job. Her nursing career "means everything" to respondent. In October 2000, she began employment at Dialysis Centers, Inc., in Carson City, Nevada, and commenced six weeks of training. She has received additional training in VA-ICU and CH-ICU, and peritoneal dialysis. She works full-time at the dialysis clinic and part-time at Sierra Convalescent Hospital, both in Nevada. Respondent testified that she intends to continue working in Nevada.

34. Respondent testified that in the past she experimented with pot and snorted coke once but never experimented with heroin. Respondent testified that she realized there were some issues she needed to take care of in her life, so she "sought out rehabilitation and counseling" on her own.

35. Respondent obtained information about the Board's diversion program but did not think it "was right for" her because they said she could not work for six months, and they did not think somebody who lived in Nevada would be eligible.

36. Respondent's current sobriety efforts involve Ms. Brandon, who claims that she can "just look at people and know if they have been using drugs or alcohol," and Mr. Dornon, who professes that he "can tell if people are lying" about drug or alcohol use. Their assertions were not persuasive. The Board's responsibility for public safety suggests that strict compliance with its supervision and probation program, including fluids testing, is necessary. As noted above, respondent intends to continue working in Nevada. While working in Nevada she would not be under the supervision of the California Board of Nursing, or complete any time that would qualify for the Board's probation. The public interest would permit her to continued licensure only if she in fact directs her attention to completion of all terms of probation, including qualifying employment.

37. The Board has incurred costs of the investigation and enforcement of the case of \$3,390.25. These costs are found to be reasonable.

LEGAL CONCLUSIONS

1. Clear and convincing evidence to a reasonable certainty established cause for revocation of respondent's license pursuant to Business and Professions Code sections 2761(a) on the grounds of unprofessional conduct as defined in section 2762(a) in that respondent obtained and self-administered heroin, a controlled substance, in violation of law.

2. Clear and convincing evidence to a reasonable certainty established cause for revocation of respondent's license pursuant to Business and Professions Code sections 2761(a) on the grounds of unprofessional conduct as defined in section 2762(b). The evidence established that respondent used heroin, a controlled substance, to an extent or in a manner dangerous or injurious to herself.

3. Cause for ordering respondent to pay the Board's costs of investigation and enforcement of \$3,390.25 was established.

ORDER

Registered nurse license number 522065 issued to Leona Mary Matha aka Leona Mary Poe aka Leona Mary Augley aka Leona Mary Keller aka Leona Mary Knights aka Leona Mary Waging aka Leona Mary Weging aka Edith Marie Downs is **REVOKED**, however, the revocation is stayed and respondent is placed on probation for five (5) years on the following terms and conditions:

SEVERABILITY CLAUSE - Each term and condition of probation contained herein is a separate and distinct term and condition. If any term and condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each term and condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

(1) **OBEY ALL LAWS** - Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this term, respondent shall submit completed fingerprint cards and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process. Respondent shall submit a recent 2" X 2" photograph of himself or herself within 45 days of the effective date of the final decision.

(2) **COMPLY WITH PROBATION PROGRAM** - Respondent shall fully comply with the terms and conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

(3) **REPORT IN PERSON** - Respondent, during the period of probation, shall appear in person at interviews/ meetings as directed by the Board or its designated representatives.

(4) **RESIDENCY OR PRACTICE OUTSIDE OF STATE** - Periods of residency or practice as a registered nurse outside of California will not apply to the reduction of this probationary term. The respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state.

(5) **SUBMIT WRITTEN REPORTS** - Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the terms and conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

(6) **PROVIDE DECISION** - Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he or she has a registered nurse license.

(7) **FUNCTION AS A REGISTERED NURSE** - Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If respondent has not complied with this condition during the probationary term, and the respondent has presented sufficient documentation of his or her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition.

(8) **EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS** -

Respondent shall obtain prior approval from the Board before commencing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to his or her employer and immediate supervisor prior to commencement of any nursing or other health care related employment.

Respondent shall notify the Board in writing within seventy-two (72) hours after he or she obtains any nursing or other health care related employment, when such employment is not as a registered nurse. Respondent shall notify the Board in writing within seventy-two (72) hours after he or she is terminated from any registered nursing, other nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination.

(9) SUPERVISION - Respondent shall obtain prior approval from the Board regarding respondent's level of supervision and/or collaboration before commencing any employment as a registered nurse.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

- (a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.
- (b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works.
- (c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked.
- (d) Home Health Care - If respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by the respondent with or without respondent present.

(10) EMPLOYMENT LIMITATIONS - Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If the respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

(11) COMPLETE A NURSING COURSE(S) - Respondent, at his or her own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of his or her probationary term. Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to respondent after photocopying them for its records.

(12) COST RECOVERY - Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$3,390.25. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

(13) VIOLATION OF PROBATION - If a respondent violates the conditions of her probation, the Board after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline of revocation of the respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation

or petition has been acted upon by the Board. Upon successful completion of probation, the respondent's license will be fully restored.

(14) PHYSICAL EXAMINATION - Within 45 days of the effective date of this decision, respondent, at his/her expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of the respondent's physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by the respondent with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the Probation Program and respondent by telephone. Respondent shall immediately cease practice and shall not resume practice until notified by the Probation Monitor. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required until the Probation Monitor has notified respondent that a medical determination permits respondent to resume practice.

(15) PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE - Respondent, at her expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months. As required, reports shall be submitted by the program on forms provided by the Board. If respondent has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, respondent, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider respondent in violation of probation.

Based on Probation Program recommendation, each week respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12 step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

(16) ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS

Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so and are part of documented medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing physician or dentist, a report identifying the medication, dosage, the date the medication was prescribed, the respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of respondent's history of substance abuse and will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

(17) SUBMIT TO TESTS AND SAMPLES - Respondent, at her expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. The respondent is responsible for keeping the Board informed of respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when he/she is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and the respondent shall be considered in violation of probation.

In addition, respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation.

(18) **MENTAL HEALTH EXAMINATION** - The respondent shall, within 45 days of the effective date of this decision, have a mental health examination including psychological testing as appropriate to determine his/her capability to perform the duties of a registered nurse. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of the respondent. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by the respondent.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Probation Program and respondent by telephone. Respondent shall immediately cease practice and may not resume practice until notified by the Probation Monitor. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required, until the Probation Monitor has notified respondent that a mental health determination permits respondent to resume practice.

(19) **THERAPY OR COUNSELING PROGRAM** - Respondent, at her expense, shall participate in an on-going counseling program until such time as the Board releases her from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

IT IS SO ORDERED.

The effective date of this decision is November 23, 2001.

Dated: October 24, 2001



SANDRA ERICKSON,
President, Board of Registered Nursing

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Attorneys for Complainant

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

NO. 2001-62

**LEONA MARY MATHA aka
LEONA MARY POE aka LEONA MARY AUGLEY
aka LEONA MARY KELLER aka
LEONA MARY KNIGHTS aka
LEONA MARY WAGING aka
LEONA MARY WEGING aka
EDITH MARIE DOWNS
P. O. Box 6112
Stateline, Nevada 89449**

ACCUSATION

Registered Nurse License No. 522065

Respondent.

Ruth Ann Terry, M.P.H., R.N., ("Complainant") for causes of discipline, alleges
as follows:

1. Complainant is the Executive Officer of the Board of Registered Nursing
Department of Consumer Affairs, State of California (hereinafter, "Board") and makes and files
this Accusation solely in her official capacity.

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1 FACTUAL BACKGROUND

2 8. On or about July 10, 1998, respondent commenced employment as a
3 registered nurse at Barton Memorial Hospital in South Lake Tahoe, California. On or about
4 August 28, 1998, deputies from the Douglas County Sheriff's Department responded to a call of
5 a reported drug overdose at respondent's residence located at 449 Mc Faul, #6, Stateline,
6 Nevada. Upon arrival at the scene, a male houseguest directed them to the upstairs portion of th
7 residence, where the deputies found respondent unconscious on the floor. After emergency
8 medical treatment was administered, including the injection of Narcan¹, respondent regained
9 consciousness. Upon questioning by the deputy sheriffs, respondent admitted to having used
10 heroin. Respondent was then transported to Carson Tahoe Hospital, where she was treated for
11 the overdose. On or about August 28, 1998, personnel at Barton Memorial Hospital received
12 information that respondent had overdosed on heroin. As a result, respondent was terminated or
13 or about August 29, 1998.

14 CAUSES FOR DISCIPLINE

15 9. Respondent has subjected her license to discipline under Business and
16 Professions Code section 2761(a) on the grounds of unprofessional conduct as defined in
17 Business and Professions Code section 2762(a) in that on or about August 28, 1998, respondent
18 obtained and self-administered heroin, a controlled substance, in violation of law, as more fully
19 set forth in paragraph 8.

20 10. Respondent has subjected her license to discipline under Business and
21 Professions Code section 2761(a) on the grounds of unprofessional conduct as defined in
22 Business and Professions Code section 2762(b) in that respondent used heroin, a controlled
23 substance, to an extent or in a manner dangerous or injurious to herself and to the extent that
24 such use impaired her ability to practice safely as a registered nurse, as more fully set forth in
25 paragraph 8.

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27
28 1. Narcan is a narcotic antagonist, used to prevent or reverse the effects of opioids including respiratory depression, sedation and hypotension, and is used for suspected acute opioid overdose.

COSTS

11. Business and Professions Code section 125.3 provides that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

12. The Board has incurred reasonable costs in investigating and enforcing this disciplinary action against respondent, the exact amount of which can not be known until immediately prior to the commencement of the hearing for this case. The amount and proof of such costs will be provided at, or immediately prior to, the hearing, pursuant to Business and Professions Code section 125.3.


WHEREFORE, Complainant prays that the Board hold a hearing on the matter alleged herein and following said hearing issue a decision and order:

1. Revoking or suspending Registered Nurse License No. 522065, issued to Leona Mary Matha;

2. Ordering respondent Leona Mary Matha to pay the Board its costs in investigating and enforcing the case according to proof at the hearing pursuant to Business and Professions Code section 125.3; and,

3. Taking such other and further action as may be deemed proper and appropriate.

DATED: 9/5/00


RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California

Complainant

Initials/Last name/first name/last name